



Queensland

Justice (Fair Trading) Legislation Amendment Act 2008

Act No. 69 of 2008



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Justice (Fair Trading) Legislation Amendment Act 2008

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Justice (Fair Trading) Legislation Amendment Act 2008

Act No. 69 of 2008

An Act to amend the Body Corporate and Community Management Act 1997, the Building Units and Group Titles Act 1980, the Churches of Christ, Scientist, Incorporation Act 1964, the Commercial and Consumer Tribunal Act 2003, the Fair Trading Act 1989, the Introduction Agents Act 2001, the Liens on Crops of Sugar Cane Act 1931, the Partnership Act 1891, the Property Agents and Motor Dealers Act 2000, the Residential Services (Accreditation) Act 2002, the Retail Shop Leases Act 1994, the Retirement Villages Act 1999, the Second-hand Dealers and Pawnbrokers Act 2003, the Security Providers Act 1993, the Tourism Services Act 2003 and the Travel Agents Act 1988 for particular purposes

[Assented to 11 December 2008]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Justice (Fair Trading) Legislation Amendment Act 2008*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Body Corporate and Community Management Act 1997

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Body Corporate and Community Management Act 1997*.

4 Amendment of s 229 (Exclusivity of dispute resolution provisions)

Section 229(5)—
omit.

5 Amendment of s 266A (Application of pt 9 to agreement referred for consent order)

(1) Section 266A(3)(e)—

omit.

(2) Section 266A(3)(d)—

renumber as section 266A(3)(e).

(3) Section 266A(3)—

insert—

‘(d) a reference in sections 271 and 273 to an affected person were a reference to an affected person for the application that resulted in the agreement; and’.

6 Amendment of s 271 (Investigative powers of adjudicator)

(1) Section 271(5), ‘if asked’—

omit, insert—

‘as requested’.

(2) Section 271(5)(b), before ‘give’—

insert—

‘in accordance with the request,’.

7 Amendment of s 289 (Right to appeal to District Court or CCT)

Section 289(1)(d)(i), ‘288A’—

omit, insert—

‘288A, definition *order*’.

8 Amendment of sch 6 (Dictionary)

Schedule 6, definition *complex dispute*, paragraph (b), ‘129,’—

omit.

[s 9]

Part 3 **Amendment of Churches of Christ, Scientist, Incorporation Act 1964**

9 Act amended in pt 3

This part amends the *Churches of Christ, Scientist, Incorporation Act 1964*.

10 Insertion of new ss 7A and 7B

After section 7—

insert—

‘7A Winding-up of the Second Church of Christ, Scientist, Brisbane

- ‘(1) The Second Church of Christ, Scientist, Brisbane (the *second church*) is dissolved.
- ‘(2) The dissolution of the second church is taken to be a winding-up of an incorporated association under the *Associations Incorporation Act 1981*, section 90 and section 91(2) and (3) of that Act applies to the dissolution as if the second church were wound-up by the Supreme Court under section 90.
- ‘(3) The following are vested in the First Church of Christ, Scientist, Brisbane—
 - (a) all real and personal property belonging to or held in trust for the second church immediately before the commencement of this section; and
 - (b) all the second church’s rights and obligations as in force immediately before the commencement.
- ‘(4) All legal proceedings that might have been started or continued by or against the second church immediately before the commencement may be started or continued against the First Church of Christ, Scientist, Brisbane.

-
- ‘(5) The chief executive must, to the extent applicable, ask the registrar of titles to record the vesting of any property under subsection (3).
 - ‘(6) The registrar of titles must, on the chief executive’s request, record the vesting in the freehold land register.
 - ‘(7) No fee is payable for recording the vesting under subsection (6).

‘7B Provision for the winding-up of other churches

- ‘(1) A church is an incorporated association and may be wound-up under part 10.
- ‘(2) Despite the *Associations Incorporation Act 1981*, section 92, if a church is wound-up under part 10, a regulation may provide for the vesting of surplus assets of the church.
- ‘(3) In this section—

church means any of the following if in existence at any time after the day after the commencement of this section—

- (a) a church mentioned in section 2, other than the Second Church of Christ, Scientist, Brisbane;
- (b) a church incorporated under section 4.

part 10 means the *Associations Incorporation Act 1981*, part 10.

surplus assets see the *Associations Incorporation Act 1981*, section 92.’.

[s 11]

Part 4 **Amendment of Commercial and Consumer Tribunal Act 2003**

11 Act amended in pt 4 and schedule

This part and the schedule amend the *Commercial and Consumer Tribunal Act 2003*.

12 Replacement of s 41 (Service of documents)

Section 41—

omit, insert—

‘41 Service of documents

‘(1) A document may be served under this Act, or under an empowering Act for the purposes of this Act—

(a) for a document to be served on a licensee—by leaving it at, or sending it to, the licensee’s address in the register of licences under the relevant empowering Act; or

(b) whether or not paragraph (a) applies—as stated in this Act.

‘(2) If personal service of a document is required under this Act, or under an empowering Act for the purposes of this Act, personal service may be effected in the same way as an originating process that is required to be served personally under the *Uniform Civil Procedure Rules 1999* may be served.

‘(3) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 39 or a provision of a relevant empowering Act providing for the service of documents.’.

13 Insertion of new s 43A

After section 43—

insert—

‘43A Substituted service

- ‘(1) If, for any reason, it is impracticable to serve a document in the way required under section 41, or under an empowering Act for the purposes of this Act, the tribunal may make an order substituting another way of serving the document.
- ‘(2) The tribunal may, in the order, state the steps to be taken, instead of service, for bringing the document to the attention of the person to be served.
- ‘(3) The tribunal may, in the order, specify that the document is to be taken to have been served on the happening of a stated event or at the end of a stated time.
- ‘(4) The tribunal may make an order under this section even though the person to be served is not in Queensland or was not in Queensland when the proceeding started.’

14 Amendment of s 53 (Inclusion of parties)

Section 53(2), after ‘initiative’—

insert—

‘or, for a fund claim, on the application of the chief executive (PAMDA)’.

15 Amendment of s 92 (When decision takes effect)

Section 92—

insert—

‘(d) if the proceeding involves a fund claim and paragraph (a) does not apply—when the decision is published.’

16 Amendment of s 93 (Registration and enforcement of decisions)

(1) Section 93(1), after ‘A party’—

insert—

‘or, for a fund claim, the chief executive (PAMDA)’.

[s 17]

(2) Section 93(1)(b), after ‘the party’s’—

insert—

‘or, for a fund claim, the chief executive (PAMDA)’s’.

(3) Section 93—

insert—

‘(1A) It is sufficient compliance with subsection (1)(b)(i) if the party’s affidavit states that service of the decision was effected on the person against whom the decision was given by substituted service in the way stated by the tribunal in a stated order.’.

17 Amendment of s 95 (Reopening an order if party does not appear)

Section 95(2)—

omit, insert—

‘(2) An application under this section must be made—

(a) if the order involves a fund claim and is an order that must be published under section 91(1)(c)—within 14 days after the order is published; or

(b) otherwise—within 14 days after the order is served on the entity.’.

18 Amendment of s 100 (Appeals)

Section 100(2), from ‘chief executive’ to ‘administered’—

omit, insert—

‘chief executive (PAMDA)’.

19 Amendment of s 114 (Hearing of proceedings)

Section 114—

insert—

‘(3A) If the matter involves a fund claim, the chief executive (PAMDA) may also make submissions to the tribunal, including submissions about liability for the claimant’s financial loss.

Note—

See *Property Agents and Motor Dealers Act 2000*, sections 490 and 530 about who is liable for a claimant’s loss.’.

20 Insertion of new pt 9, div 3

Part 9—

insert—

‘Division 3 Transitional provision for Justice (Fair Trading) Legislation Amendment Act 2008

‘169 Registration of tribunal decisions

- ‘(1) This section applies to a decision of the tribunal involving a fund claim.
- ‘(2) The chief executive (PAMDA) may register the decision as provided under section 93 as in force after the commencement of this section even though the decision was given before the commencement.’.

21 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘*chief executive (PAMDA)* means the chief executive of the department in which the *Property Agents and Motor Dealers Act 2000* is administered.

fund claim means a claim against the claim fund established under the *Property Agents and Motor Dealers Act 2000*, section 408.’.

[s 22]

Part 5 **Amendment of Fair Trading Act 1989**

22 **Act amended in pt 5**

This part amends the *Fair Trading Act 1989*.

23 **Amendment of s 91L (Register of undertakings)**

Section 91L—

insert—

- ‘(4) The commissioner may publish the information contained in the register on the department’s web site.’.

Part 6 **Amendment of Introduction Agents Act 2001**

24 **Act amended in pt 6**

This part amends the *Introduction Agents Act 2001*.

25 **Amendment of s 19 (Application for licence)**

- (1) Section 19(2)(c)—

omit, insert—

‘(c) be accompanied by—

- (i) the application fee prescribed under a regulation; and
- (ii) if, before or when the application is made, the chief executive requires the payment of costs under section 23A(1)—the amount of the costs required to be paid.’.

(2) Section 19—

insert—

‘(6) A requirement mentioned in subsection (2)(c)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

26 Amendment of s 23 (Inquiries about applicant’s suitability to hold licence)

(1) Section 23(2), ‘written’—

omit.

(2) Section 23(4), from ‘offence’—

omit, insert—

‘offence.’.

(3) Section 23(4)—

renumber as section 23(5).

(4) Section 23—

insert—

‘(4) If the criminal history of the applicant or the named associated person includes a conviction recorded against the applicant or the named associated person, the commissioner’s report must be written.’.

27 Insertion of new ss 23A and 23B

After section 23—

insert—

‘23A Costs of criminal history report

‘(1) The chief executive may require an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under section 23 about the applicant or an associated person of the applicant.

[s 28]

- ‘(2) The chief executive must refund to the applicant an amount paid under the requirement if—
- (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant withdraws the application before the chief executive asks for the report.
- ‘(3) In this section—
applicant includes proposed applicant.

‘23B Confidentiality of criminal history

- ‘(1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else a report about a person’s criminal history, or information contained in the report, given under section 23.
Maximum penalty—100 penalty units.
- ‘(2) However, the person does not contravene subsection (1) if—
- (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act; or
 - (b) the disclosure is otherwise required or permitted by law.
- ‘(3) The chief executive must destroy a written report about a person’s criminal history as soon as practicable after considering the person’s suitability to hold a licence.’.

28 Amendment of s 25 (Renewal of licence)

- (1) Section 25(2)(c)—
omit, insert—
- ‘(c) be accompanied by—
- (i) the application fee prescribed under a regulation; and

(ii) if, before or when the application is made, the chief executive requires the payment of costs under section 23A(1)—the amount of the costs required to be paid.’.

(2) Section 25—

insert—

‘(6) A requirement mentioned in subsection (2)(c)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

29 Amendment of s 26 (Grounds for suspending, cancelling, refusing to renew or imposing conditions on a licence)

Section 26(a), from ‘licence’ to ‘incorrect’—

omit, insert—

‘licence, or a renewal of the licence, was obtained because of materially incorrect’.

Part 7 Amendment of Partnership Act 1891

30 Act amended in pt 7

This part amends the *Partnership Act 1891*.

31 Amendment of s 70 (Definitions for ch 4)

Section 70—

insert—

‘*ESVCLP* means an ESVCLP within the meaning of the *Venture Capital Act 2002* (Cwlth).’.

[s 32]

32 Amendment of s 75 (Who may apply for registration)

Section 75(2)(a)(i) and (ii), after ‘VCLP’—

insert—

‘, ESVCLP’.

33 Amendment of s 76 (How is an application made)

Section 76(4)(c) and (d), after ‘VCLP’—

insert—

‘, ESVCLP’.

34 Amendment of s 83 (Powers of partnership)

Section 83(3), after ‘VCLP’—

insert—

‘, ESVCLP’.

35 Amendment of s 87 (Limited partner not to take part in the management of the incorporated limited partnership)

Section 87(3)(1), after ‘VCLP’—

insert—

‘, ESVCLP’.

36 Amendment of s 97 (Winding up on chief executive’s certificate)

Section 97(1)(b), after ‘VCLP’—

insert—

‘, ESVCLP’.

37 Amendment of s 109 (Lodgment of certain documents with the chief executive)

Section 109(1) and (3)(a), after ‘VCLP’—

insert—

‘, ESVCLP’.

38 Amendment of sch (Dictionary)

Schedule—

insert—

‘*ESVCLP*, for chapter 4, see section 70.’.

Part 8 Amendment of Property Agents and Motor Dealers Act 2000

39 Act amended in pt 8

This part amends the *Property Agents and Motor Dealers Act 2000*.

40 Amendment of s 5 (Exemption—public officials)

Section 5(3), definition *bailiff*, ‘*District Court Act 1967*’—

omit, insert—

‘*District Court of Queensland Act 1967*’.

41 Amendment of s 21 (Steps involved in obtaining a licence)

Section 21(2)(b)—

omit, insert—

‘(b) paying—

[s 42]

- (i) the fees prescribed under a regulation; and
- (ii) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and’.

42 Amendment of s 22 (Application for licence)

- (1) Section 22(2)(c)—
renumber as section 22(2)(d).
- (2) Section 22(2)—
insert—
‘(c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and’.

43 Amendment of s 32 (Investigations about suitability of applicants and licensees)

- (1) Section 32(1)(b) and (c)—
renumber as section 32(1)(c) and (d).
- (2) Section 32(1)—
insert—
‘(b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction;’.
- (3) Section 32(2), ‘written’—
omit.
- (4) Section 32—
insert—

-
- ‘(5) If the criminal history of the person includes a conviction recorded against the person, the commissioner’s report must be written.
- ‘(6) In this section—
applicant includes a nominated person mentioned in section 64(3), 65(4) or 66(4).’.

44 Insertion of new s 32A

After section 32—

insert—

‘32A Costs of criminal history report

- ‘(1) The chief executive may require an applicant or licensee to pay the reasonable, but no more than actual, costs of obtaining a report under section 32 about—
- (a) the applicant or licensee; or
 - (b) if the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction with others—each member of the partnership or each person with whom the applicant or licensee intends carrying on, or carries on, business in partnership or in conjunction; or
 - (c) if the applicant or licensee is a corporation—the corporation’s executive officers; or
 - (d) a business associate of the applicant or licensee; or
 - (e) if the applicant has made an application under section 64(3), 65(4) or 66(4)—the person nominated by the applicant under section 64(3), 65(4) or 66(4).
- ‘(2) The requirement is a *criminal history costs requirement*.
- ‘(3) The requirement is sufficiently made of the applicant or licensee if it is made generally of applicants of that type in the relevant approved form or notified on the department’s web site for applicants or licensees of that type.

[s 45]

- ‘(4) The chief executive must refund to an applicant an amount paid under the requirement if—
- (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant withdraws the application before the chief executive asks for the report.
- ‘(5) In this section—
applicant includes proposed applicant.’.

45 Amendment of s 33 (Criminal history is confidential document)

- (1) Section 33, heading—
omit, insert—

‘33 Confidentiality of criminal history’.

- (2) Section 33(3), ‘the report’—
omit, insert—
‘a written report about a person’s criminal history’.

46 Amendment of s 57 (Application for renewal)

- (1) Section 57(2)(d)—
insert—
‘(iv) if, before or when the application is made, a criminal history costs requirement is made of the licensee—the amount of the costs required to be paid.’.
- (2) Section 57(4A) to (6)—
renumber as section 57(5) to (7).

47 Amendment of s 60 (Application for restoration)

- (1) Section 60(1), ‘the licensee’—

omit, insert—

‘the person (**former licensee**)’.

- (2) Section 60(3), (4A) before ‘licensee’—

insert—

‘former’.

- (3) Section 60(2)(d) and (6), definition *relevant audit period*, before ‘licensee’s’—

insert—

‘former’.

- (4) Section 60(2)(e)(iv), from ‘licensee’ to ‘licensee’s’—

omit, insert—

‘former licensee was required as a condition of the former licensee’s’.

- (5) Section 60(2)(e)—

insert—

‘(v) if, before or when the application is made, a criminal history costs requirement is made of the former licensee—the amount of the costs required to be paid.’.

- (6) Section 60(5), before ‘licensee’, first and second mentions—

insert—

‘former’.

48 Amendment of s 64 (Appointment of substitute licensee—principal licensee—individual)

Section 64(5)(c)—

omit, insert—

‘(c) the application fee prescribed under a regulation; and

[s 49]

- (d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.’.

49 Amendment of s 65 (Appointment of substitute licensee—employed licensee in charge of a licensee’s business at a place)

Section 65(5)(c)—

omit, insert—

- ‘(c) the application fee prescribed under a regulation; and
- (d) if, before or when the application is made, a criminal history costs requirement is made of the principal licensee—the amount of the costs required to be paid.’.

50 Amendment of s 66 (Appointment of substitute licensee—pastoral house manager in charge of a licensee’s business at a place)

Section 66(5)(c)—

omit, insert—

- ‘(c) the application fee prescribed under a regulation; and
- (d) if, before or when the application is made, a criminal history costs requirement is made of the pastoral house—the amount of the costs required to be paid.’.

51 Amendment of s 67 (Chief executive may appoint or refuse to appoint substitute licensee)

Section 67(2)(a), after ‘is’—

insert—

- ‘, under part 4.’.

52 Amendment of s 74 (Immediate suspension)

Before section 74(1)(a)—

insert—

‘(aa) the chief executive considers, on reasonable grounds, that a licensee’s licence was obtained, or renewed or restored, because of materially incorrect or misleading information; or’.

53 Amendment of s 84 (Application for registration)

(1) Section 84(2)(c)—

renumber as section 84(2)(d).

(2) Section 84(2)—

insert—

‘(c) if, before or when the application is made, a criminal history costs requirement is made of the applicant—the amount of the costs required to be paid; and’.

54 Amendment of s 87 (Investigations about suitability of applicants)

(1) Section 87(2), ‘written’—

omit.

(2) Section 87—

insert—

‘(5) If the criminal history of the applicant includes a conviction recorded against the applicant, the commissioner’s report must be written.’.

55 Insertion of new s 87A

After section 87—

insert—

[s 56]

‘87A Costs of criminal history report

- ‘(1) The chief executive may require an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under section 87 about the applicant.
- ‘(2) The requirement is a *criminal history costs requirement*.
- ‘(3) The requirement is sufficiently made of the applicant if it is made generally of applicants for, or for the renewal or restoration of, registration in the relevant approved form or notified on the department’s web site for applications of that type.
- ‘(4) The chief executive must refund to the applicant an amount paid under the requirement if—
 - (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant withdraws the application before the chief executive asks for the report.
- ‘(5) In this section—
applicant includes proposed applicant.’.

56 Amendment of s 88 (Criminal history is confidential document)

- (1) Section 88, heading—
omit, insert—

‘88 Confidentiality of criminal history’.

- (2) Section 88(3), ‘the report’—
omit, insert—
‘a written report about a person’s criminal history’.

57 Amendment of s 94 (Application for renewal)

- Section 94(2)(d)—
insert—

‘(iii) if, before or when the application is made, a criminal history costs requirement is made of the registered employee—the amount of the costs required to be paid.’.

58 Amendment of s 97 (Application for restoration)

(1) Section 97(1), ‘the employee’—

omit, insert—

‘the person (**former employee**)’.

(2) Section 97(2)(d), ‘the employee’—

omit, insert—

‘former employee’.

(3) Section 97(2)(e)—

insert—

‘(iv) if, before or when the application is made, a criminal history costs requirement is made of the former employee—the amount of the costs required to be paid.’.

(4) Section 97(3), ‘the applicant’—

omit, insert—

‘the former employee’.

59 Amendment of s 104 (Immediate suspension)

Before section 104(1)(a)—

insert—

‘(aa) a registered employee’s registration certificate, or a renewal or restoration of the registration certificate, was obtained because of materially incorrect or misleading information; or’.

[s 60]

60 Amendment of s 410 (Agreements with financial institutions)

Section 410(2)—

omit, insert—

- ‘(2) The chief executive may enter into an agreement only with the Minister’s approval.’.

61 Amendment of s 469 (Definitions for ch 14)

Section 469, definition *complaint*—

omit, insert—

‘*complaint*, for a marketeer proceeding, see section 500B(1).’.

62 Amendment of s 477 (Inspector may investigate claims and prepare report)

- (1) Section 477, heading—

omit, insert—

‘477 Inspector may investigate claims and report and related documents may be referred to the tribunal’.

- (2) Section 477—

insert—

- ‘(4) The chief executive may also give documents relating to the claim to the claimant and the respondent (*the parties*) and, if the claim is to be decided by the tribunal, to the chairperson of the tribunal whether or not a report is given to the parties and the tribunal under subsection (3).’.

63 Amendment of s 485 (Registrar to fix hearing date and issue attendance notices)

Section 485(3), after ‘respondent’—

insert—

‘personally’.

64 Amendment of s 496 (Grounds for starting disciplinary proceedings)

Section 496(1)(e), after ‘a licence’—

insert—

‘or registration certificate’.

65 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *approved financial institution*—
omit.

(2) Schedule 2—

insert—

‘*approved financial institution* means a financial institution that has entered into an agreement with the chief executive under section 410.

criminal history costs requirement see—

(a) generally for an applicant or licensee—section 32A(2);
or

(b) for an applicant for, or for the renewal or restoration of, registration—section 87A(2).’.

(3) Schedule 2, definition *former licensee*, paragraph (b), ‘part 3,’—

omit.

**Part 9 Residential Services
(Accreditation) Act 2002**

66 Act amended in pt 9 and schedule

This part and the schedule amend the *Residential Services (Accreditation) Act 2002*.

[s 67]

67 Amendment of s 10 (Application for registration)

(1) Section 10(2)(e)—

omit, insert—

‘(e) be accompanied by—

- (i) the application fee prescribed under a regulation;
and
- (ii) if, before or when the application is made, the chief executive requires the payment of costs under section 24A(1)—the amount of the costs required to be paid.’.

(2) Section 10—

insert—

‘(6) A requirement mentioned in subsection (2)(e)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

68 Amendment of s 15 (Cancellation of registration by chief executive)

Before section 15(1)(a)—

insert—

‘(aa) the registration of the residential service, or the registration under section 61 of a person as a service provider for the registered service, was obtained because of materially incorrect or misleading information; or’.

69 Amendment of s 24 (Obtaining criminal history report)

(1) Section 24(2), from ‘criminal’ to ‘person’—

omit, insert—

‘report about the criminal history of the person’.

(2) Section 24—

insert—

‘(4) If the criminal history of the person includes a conviction recorded against the person, the report must be written.’.

70 Insertion of new s 24A

After section 24—

insert—

‘24A Costs of criminal history report

‘(1) The chief executive may require a service provider or an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under section 24 about—

- (a) the service provider or the applicant; or
- (b) a person the chief executive reasonably considers is an associate of the service provider or the applicant.

‘(2) The chief executive must refund to an applicant an amount paid under the requirement if—

- (a) the chief executive refuses the application without asking for the report; or
- (b) the applicant withdraws the application before the chief executive asks for the report.

‘(3) In this section—

applicant includes proposed applicant.’.

71 Amendment of s 27 (Destruction of criminal history report)

(1) Section 27, heading, before ‘criminal’—

insert—

‘**written**’.

[s 72]

- (2) Section 27(1), before ‘criminal’—
insert—
‘written’.

72 Amendment of s 61 (Becoming a service provider)

- (1) Section 61(2)(f)—
omit, insert—
‘(f) be accompanied by—
(i) the application fee prescribed under a regulation;
and
(ii) if, before or when the application is made, the chief executive requires the payment of costs under section 24A(1)—the amount of the costs required to be paid.’.
- (2) Section 61—
insert—
‘(8) A requirement mentioned in subsection (2)(f)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

Part 10 Amendment of Retirement Villages Act 1999

73 Act amended in pt 10 and schedule

This part and the schedule amend the *Retirement Villages Act 1999*.

74 Amendment of s 27 (Application for registration of a retirement village scheme)

(1) Section 27(2)(c)—

omit, insert—

‘(c) the application fee prescribed under a regulation; and

(d) if, before or when the application is made, the chief executive requires the payment of costs under section 88AA(1)—the amount of the costs required to be paid.’.

(2) Section 27—

insert—

‘(3) A requirement mentioned in subsection (2)(d) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

75 Amendment of s 88A (Investigations about scheme operators etc.)

(1) Section 88A(1), ‘written’—

omit.

(2) Section 88A—

insert—

‘(4) If the criminal history of the person includes a conviction recorded against the person, the commissioner’s report must be written.’.

76 Insertion of new s 88AA

After section 88A—

insert—

‘88AA Costs of criminal history report

‘(1) The chief executive may require an applicant for the registration of a retirement village scheme to pay the

[s 77]

reasonable, but no more than actual, costs of obtaining a report under section 88A about the applicant.

- ‘(2) The chief executive must refund to the applicant an amount paid under the requirement if—
- (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant withdraws the application before the chief executive asks for the report.
- ‘(3) In this section—
applicant includes proposed applicant.’.

77 Amendment of s 88B (Criminal history is confidential document)

- (1) Section 88B, heading—
omit, insert—

‘88B Confidentiality of criminal history’.

- (2) Section 88B(3), ‘the report’—
omit, insert—
‘a written report about a person’s criminal history’.

78 Amendment of s 90C (Responsibility of former resident for capital improvement)

Section 90C, ‘stops being responsible, under section 104(3)’—
omit, insert—
‘ceases to be liable, under section 104(2)(b)’.

Part 11 Amendment of Second-hand Dealers and Pawnbrokers Act 2003

79 Act amended in pt 11

This part amends the *Second-hand Dealers and Pawnbrokers Act 2003*.

80 Amendment of s 8 (Investigations about suitability of applicants and licensees)

(1) Section 8(2), 'written'—

omit.

(2) Section 8—

insert—

'(5) If the criminal history of the person includes a conviction recorded against the person, the commissioner's report must be written.'

81 Insertion of new s 8A

After section 8—

insert—

'8A Costs of criminal history report

'(1) The chief executive may require an applicant or licensee to pay the reasonable, but no more than actual, costs of obtaining a report under section 8 about—

(a) the applicant or licensee; or

(b) an associate of the applicant or licensee.

'(2) The chief executive must refund to an applicant an amount paid under the requirement if—

(a) the chief executive refuses the application without asking for the report; or

[s 82]

(b) the applicant withdraws the application before the chief executive asks for the report.

‘(3) In this section—

applicant includes proposed applicant.’.

82 Amendment of s 9 (Criminal history is a confidential document)

(1) Section 9, heading—

omit, insert—

‘9 Confidentiality of criminal history’.

(2) Section 9(3), ‘the report’—

omit, insert—

‘a written report about a person’s criminal history’.

83 Amendment of s 10 (Application for licence)

(1) Section 10(2)(c)—

omit, insert—

‘(c) be accompanied by—

(i) the application fee prescribed under a regulation;
and

(ii) if, before or when the application is made, the chief executive requires the payment of costs under section 8A(1)—the amount of the costs required to be paid.’.

(2) Section 10—

insert—

‘(3) A requirement mentioned in subsection (2)(c)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

84 Amendment of s 13 (Renewal of licence)

(1) Section 13(2)(d)—

omit, insert—

‘(d) be accompanied by—

- (i) the application fee prescribed under a regulation;
and
- (ii) if, before or when the application is made, the chief executive requires the payment of costs under section 8A(1)—the amount of the costs required to be paid.’.

(2) Section 13—

insert—

‘(3) A requirement mentioned in subsection (2)(d)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

85 Amendment of s 14 (Restoration of licence)

(1) Section 14(2)(d)—

omit, insert—

‘(d) be accompanied by—

- (i) the application fee prescribed under a regulation;
and
- (ii) if, before or when the application is made, the chief executive requires the payment of costs under section 8A(1)—the amount of the costs required to be paid.’.

(2) Section 14—

insert—

‘(3) A requirement mentioned in subsection (2)(d)(ii) is sufficiently made of the applicant if it is made generally of

[s 86]

applicants in the approved form or notified on the department's web site.'.

86 Amendment of s 19 (Grounds for suspending, cancelling, refusing to renew or restore, or imposing conditions on a licence)

Section 19(1)(a), from 'licence' to 'incorrect'—

omit, insert—

'licence, or a renewal or restoration of the licence, was obtained because of materially incorrect'.

Part 12 Amendment of Security Providers Act 1993

87 Act amended in pt 12

This part amends the *Security Providers Act 1993*.

88 Amendment of s 10 (Application)

(1) Section 10—

insert—

'(2A) If, before or when the application is made, the chief executive requires the payment of costs under section 12AA(1), the application must also be accompanied by the amount of the costs required to be paid.

'(7) A requirement mentioned in subsection (2A) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department's web site.'.

89 Amendment of s 11 (Entitlement to licences—individuals)

(1) Section 11(5), from 'convicted of'—

omit, insert—

‘a disqualifying offence.’.

- (2) Section 11(6), definition *relevant offence*, from ‘offence,’ to ‘Queensland,’—

omit, insert—

‘offence’.

- (3) Section 11(6), definitions *relevant offence* and *unrecorded finding of guilt*—

relocate to schedule 2.

90 Insertion of new s 12AA

After section 12—

insert—

‘12AA Costs of criminal history report

- ‘(1) The chief executive may require an applicant or licensee to pay the reasonable, but no more than actual, costs of obtaining a report under section 12 about—
- (a) the applicant or licensee; or
 - (b) if the applicant or licensee is a corporation—an officer of the corporation; or
 - (c) if the applicant or licensee is a partnership—a partner in the partnership.
- ‘(2) The chief executive must refund to an applicant an amount paid under the requirement if—
- (a) the chief executive refuses the application without asking for the report; or
 - (b) the applicant withdraws the application before the chief executive asks for the report.
- ‘(3) In this section—
- applicant* includes proposed applicant.’.

[s 91]

91 Amendment of s 20 (Renewal of licence)

(1) After section 20(1)—

insert—

‘(1A) If, before or when the application is made, the chief executive requires the payment of costs under section 12AA(1), the application must be accompanied by the amount of the costs required to be paid.’.

(2) Section 20—

insert—

‘(6) A requirement mentioned in subsection (1A) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

92 Amendment of s 21 (Grounds for suspension, cancellation or refusal to renew)

Section 21(1)(a), from ‘licence’ to ‘incorrect’—

omit, insert—

‘licence, or a renewal of the licence, was obtained because of materially incorrect’.

93 Insertion of new pt 6

After part 5—

insert—

‘Part 6 Declaratory provision

‘64 Declaratory provision for s 29

‘(1) To remove any doubt, it is declared that the amending provision had effect, on the commencement, to omit section 29 as in force immediately before the commencement and to insert section 29 as set out in the amending provision.

‘(2) In this section—

amending provision means the *Security Providers Amendment Act 2007*, section 27.

commencement means the commencement of the amending provision.’.

94 Amendment of sch 1, pt 1 (Existing provisions)

(1) Schedule 1, part 1—

insert—

‘9A Chapter 33A (Unlawful stalking)’.

(2) Schedule 1, part 1, item 5, ‘Suicide—Concealment’—

omit, insert—

‘suicide—concealment’.

(3) Schedule 1, part 1, item 12, ‘Extortion’—

omit, insert—

‘extortion’.

(4) Schedule 1, part 1, item 15, after ‘Receiving’—

insert—

‘property’.

95 Amendment of sch 2 (Dictionary)

Schedule 2, definition *disqualifying offence*—

omit, insert—

‘disqualifying offence—

(a) means an offence—

(i) under the *Weapons Act 1990* that is punishable by imprisonment for 1 year or more, even if a fine may be imposed in addition or as an alternative; or

[s 96]

- (ii) under the *Drugs Misuse Act 1986* that is punishable by imprisonment for 1 year or more, even if a fine may be imposed in addition or as an alternative; or
 - (iii) against a provision of the Criminal Code mentioned in schedule 1; or
 - (iv) against the *Police Service Administration Act 1990*, section 10.19(b), (c), (d), (e) or (f); and
- (b) includes an act or omission committed outside Queensland that would be a disqualifying offence if committed in Queensland.’.

Part 13 Amendment of Tourism Services Act 2003

96 Act amended in pt 13

This part amends the *Tourism Services Act 2003*.

97 Omission of s 11 (Notes in text)

Section 11—

omit.

98 Amendment of s 15 (Inquiries about applicant’s suitability to hold registration)

(1) Section 15(2), ‘written’—

omit.

(2) Section 15(4) and (5)—

renumber as section 15(5) and (6).

(3) Section 15—

insert—

‘(4) If the criminal history of the applicant or the named associated person includes a conviction recorded against the applicant or the named associated person, the commissioner’s report must be written.’.

99 Insertion of new s 15A

Part 3, division 2—

insert—

‘15A Costs of criminal history report

‘(1) The chief executive may require an applicant to pay the reasonable, but no more than actual, costs of obtaining a report under section 15 about the applicant or an associated person of the applicant.

‘(2) The chief executive must refund to the applicant an amount paid under the requirement if—

- (a) the chief executive refuses the application without asking for the report; or
- (b) the applicant withdraws the application before the chief executive asks for the report.

‘(3) In this section—

applicant includes proposed applicant.’.

100 Amendment of s 20 (Application for registration)

(1) Section 20(2)(c)—

omit, insert—

‘(c) be accompanied by—

- (i) the application fee prescribed under a regulation;
- and

[s 101]

- (ii) the registration issue fee prescribed under a regulation; and
 - (iii) if, before or when the application is made, the chief executive requires the payment of costs under section 15A(1)—the amount of the costs required to be paid.’.
- (2) Section 20—
insert—
- ‘(7) A requirement mentioned in subsection (2)(c)(iii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

101 Amendment of s 22 (Application for renewal of registration)

- (1) Section 22(2)(c)—
omit, insert—
 - ‘(c) be accompanied by—
 - (i) the registration renewal fee prescribed under a regulation; and
 - (ii) if, before or when the application is made, the chief executive requires the payment of costs under section 15A(1)—the amount of the costs required to be paid.’.
- (2) Section 22—
insert—
- ‘(7) A requirement mentioned in subsection (2)(c)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

102 Amendment of s 82 (Grounds for starting disciplinary proceedings)

Section 82(1)(b), after ‘registration’—

insert—

‘, or a renewal of registration.’

Part 14 Amendment of Travel Agents Act 1988

103 Act amended in pt 14 and schedule

This part and the schedule amend the *Travel Agents Act 1988*.

104 Amendment of s 6 (Definitions)

Section 6—

insert—

‘**criminal history**, of a person, means a person’s criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.’

105 Amendment of s 14 (Application for a licence)

(1) Section 14(1)(c)—

omit, insert—

‘(c) be accompanied by—

[s 106]

- (i) the application fee prescribed under a regulation; and
 - (ii) if, before or when the application is made, the chief executive requires the payment of costs under section 15B(1)—the amount of the costs required to be paid.’.
- (2) Section 14—
insert—
- ‘(6) A requirement mentioned in subsection (1)(c)(ii) is sufficiently made of the applicant if it is made generally of applicants in the approved form or notified on the department’s web site.’.

106 Insertion of new ss 15A–15C

After section 15—

insert—

‘15A Investigation of applicants

- ‘(1) The commissioner may make investigations about a person to help the commissioner decide whether the person—
- (a) is a fit and proper person for the grant of an application for registration, or renewal of registration; or
 - (b) continues to be a fit and proper person.
- ‘(2) Without limiting subsection (1) or section 15, the commissioner may ask the commissioner of the police service for a report about the criminal history of the person.
- ‘(3) If the criminal history of the person includes a conviction recorded against the person, the commissioner’s report must be written.

‘15B Costs of criminal history report

- ‘(1) The commissioner may require a person mentioned in section 15A(1) to pay the reasonable, but no more than actual, costs of obtaining a report under section 15A about the person.
- ‘(2) The commissioner must refund to a person who is an applicant an amount paid under the requirement if—
 - (a) the commissioner refuses the application without asking for the report; or
 - (b) the person withdraws the application before the commissioner asks for the report.

‘15C Confidentiality of criminal history

- ‘(1) A public service employee performing functions under this Act must not, directly or indirectly, disclose to anyone else a report about a person’s criminal history, or information contained in the report, given under section 15A.
Maximum penalty—100 penalty units.
- ‘(2) However, the person does not contravene subsection (1) if—
 - (a) disclosure of the report or information to someone else is authorised by the commissioner to the extent necessary to perform a function under or in relation to this Act; or
 - (b) the disclosure is otherwise required or permitted by law.
- ‘(3) The commissioner must destroy a written report about a person’s criminal history as soon as practicable after it is no longer needed for the purpose for which it was requested.’.

[s 107]

Part 15 **Other minor amendments**

107 **Acts amended in schedule**

- (1) The schedule amends the Acts it mentions.
- (2) However, subsection (1) does not apply in relation to a particular Act if another provision of this Act states that the schedule amends the particular Act.

Schedule Minor amendments

sections 3, 11, 66, 73, 103 and 107(1)

Body Corporate and Community Management Act 1997

- 1 Chapter 3, part 2, division 6, heading—**
omit.

- 2 Section 293, before ‘the *Uniform Civil Procedure Rules
1999*’—**
insert—
‘(a)’.

- 3 Section 294(1)(c), ‘direction’—**
omit, insert—
‘directions’.

- 4 Schedule 1A, heading, after ‘section 101B and’—**
insert—
‘schedule 6.’.

Building Units and Group Titles Act 1980

- 1 Part 7, heading, ‘provisions’—**
omit, insert—
‘provision’.

Commercial and Consumer Tribunal Act 2003

- 1 Section 156, heading, ‘pt 9’—**
omit, insert—
‘div 1’.

- 2 Section 156, ‘In this part’—**
omit, insert—
‘In this division’.

- 3 Schedule 2, definition *public examination*, ‘division 4’—**
omit, insert—
‘division 3’.

Liens on Crops of Sugar Cane Act 1931

- 1 Section 25, heading, ‘Regulations’—**
omit, insert—
‘Regulation-making power’.

Residential Services (Accreditation) Act 2002

- 1 Section 4(5)(i), ‘; or’—**
omit, insert—
‘;’.

Retail Shop Leases Act 1994

- 1 Section 116(4), after ‘reasonable’, first mention—**
insert—
‘and’.

Retirement Villages Act 1999

- 1 Section 53(3), ‘terminated on the’—**
omit, insert—
‘terminated’.
- 2 Section 194(2)(a), ‘; or’—**
omit, insert—
‘;’.
- 3 Section 210(1)(b), ‘District Court Act 1967’—**
omit, insert—
‘District Court of Queensland Act 1967’.
- 4 Schedule, definitions *conviction* and *relevant conviction*, after ‘*conviction*’—**
insert—
‘;’.

5 Schedule, definition *insolvent under administration*, ‘for part 5, division 1’—

omit, insert—

‘, for part 5, division 1.’.

Travel Agents Act 1988

1 Sections 9(2)(a) and (b), 26(3)(a) and 36(1)(a), after ‘;’—

insert—

‘or’.

2 Section 56, ‘In’—

omit, insert—

‘Each of the following applies in’.

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